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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1221

OSWALD AND HESS COMPANY, A CORPORATION,
Petitioner,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS AND BRIEF IN SUPPORT THEREOF.

ELI E. REICH,
BENJAMIN M. BECKER,
Counsel for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Oswald and Hess Company, petitioner, respectfully prays for a Writ of Certiorari to the United States Emergency Court of Appeals to review the determination of that Court entered in the above case on March 29, 1945, dismissing the complaint of your Petitioner filed with that Court after denial of its protest agaist Maximum Price Regulation 169, issued pursuant to the Emergency Price Control Act of 1942 (Pub. L. No. 421, 77th Cong., 2d Sess.).

Summary Statement of Matters Involved

The United States Emergency Court of Appeals issued an order and rendered an opinion (R. 189, 184) dismissing the complaint both on the authority of its decision in *Armour &*

Company v. *Chester Bowles*, a companion case decided on the same day, and because it concluded that the premium allowed by the regulation to hotel supply houses was neither excessive nor discriminatory. The Court also decided that it had no jurisdiction to pass upon paragraph 1364.455 (b) of the regulation, which restricted a slaughterer from entering that type of business unless he was so engaged in a base period.

On August 20, 1942, your Petitioner filed a formal, timely protest to Maximum Price Regulation 169, C. F. R. Title 32, Chapter 11, Part 1364, issued June 19, 1942, which was docketed at No. 1169-26-P. This protest was filed under Section 203 of the Emergency Price Control Act of 1942.

After extended proceedings, the Administrator, on May 4, 1943, issued an Order denying the protest insofar as relief was not found in the provisions of Revised Maximum Price Regulation 169, which had been issued on December 10, 1942 (7 F. R. 10381).

On May 24, 1943, your Petitioner filed its complaint in the United States Emergency Court of Appeals. On November 3, 1943, the Emergency Court of Appeals granted an application by Petitioner for leave to introduce additional evidence to show the inadequacy of the relief afforded by the revised regulation in conjunction with the subsidy program established pursuant to the Directive of the Economic Stabilization Director issued October 26, 1943 (8 F. R. 14641). Accordingly, the Respondent, on November 23, 1943, reopened the protest proceedings to receive the additional evidence and thereafter the protest proceeding was focused on the issue of the validity of RMPR 169. On July 6, 1944, the Respondent issued an Order, with accompanying opinion, denying the protest upon reconsideration.

The complaint to the United States Emergency Court of Appeals followed, and the Court filed an opinion and made an order on March 29, 1945 dismissing the complaint.

Statements Disclosing Basis of Jurisdiction to Review

1. The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942.

2. The decision of the United States Emergency Court of Appeals was entered on March 29, 1943 (R. 189).

Questions Presented

Questions presented are:

1. Does the Price Administrator have authority to issue a regulation which forces petitioner to sell one of its principal products at a loss?

2. Is a price regulation discriminatory which permits a hotel and restaurant supply house, which fabricates cuts of beef, to operate at a profit and compels an ordinary slaughterer, operating under the same regulation, to sell similar cuts of beef at a loss?

3. Is a regulation valid which prohibits petitioner, a slaughterer and processor, from selling its product to hotels and restaurants because it was not so engaged in a base period fixed by the Administrator?

Reasons Relied On for Allowance of Writ

The problems faced by the meat industry because of the beef regulation, MPR 169, have assumed national importance since its inception. The decision of the United States Emergency Court of Appeals, dismissing the complaint in the instant case, has a far reaching effect for the reason that the Court has in substance upheld the principle that a regulation can in effect direct a company to sell its merchandise at a loss and still be valid.

The United States Emergency Court of Appeals has also decided that a hotel and restaurant supply house is en-

titled to receive a premium for the fabricating it does and thereby earn a profit, while the ordinary slaughterer, like the Petitioner herein, doing the same general job of processing, must sell below its cost of production.

The Emergency Court of Appeals has also taken the position that it has no jurisdiction over paragraph 1364.455 (b) of Maximum Price Regulation 169, which limits other processors from entering the hotel and restaurant supply business unless they were so engaged in a base period.

All of the foregoing reasons establish that Maximum Price Regulation 169 is discriminatory and unfair, and should be set aside.

WHEREFORE, your Petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Emergency Court of Appeals, commanding that Court to certify and send to this Court for its review and determination, a full and complete transcript of the record and all proceedings in this case numbered and entitled on its docket, No. 49, Oswald and Hess Company, a corporation, v. Chester Bowles, Price Administrator, and that said judgment of the United States Emergency Court of Appeals may be reversed and that Petitioner may have such other and further relief in the premises as to your Honorable Court may seem meet and just.

And your Petitioner will ever pray.

ELI E. REICH,
BENJAMIN M. BECKER,
Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion Below

The opinion of the United States Emergency Court of Appeals is unreported. (R. 184).

II

Statement of the Case

The relevant record facts and the facts with regard to the jurisdiction of this Court are both stated in the petition.

III

Specification of Errors

The errors which your Petitioner will urge if the Writ of Certiorari is allowed are that the United States Emergency Court of Appeals erred,

1. In that it decided and upheld the validity of Maximum Price Regulation 169 as amended and revised.

2. That the Price Administrator could legally force Petitioner, or any other person similarly situated, to sell its product at a loss.

3. That the pertinent provisions of General Maximum Price Regulation 169, with respect to alleged favoritism shown to hotel and restaurant supply houses, are legal and valid. The summary of argument embraces the errors herein set forth.

IV

Argument

Petitioner has offered and produced uncontradicted evidence that it cannot slaughter cattle, except at a loss. In support of this statement, it submitted figures for a one-year period from November, 1942 to October, 1943 (R. 101), showing that its average dressed beef cost for this period was 24.8¢ per pound. In this same period the ceiling prices, as fixed by Maximum Price Regulation 169 ranged from 13¼¢ per pound for the cheapest type of meat to 21¢ per pound for the choice grade. It was therefore obvious to the Administrator and to the Court below that every pound of beef that was slaughtered was done so at a loss. The Emergency Court, however, justified this practice in the case of *Armour & Company, an Illinois corporation*, v. *Chester Bowles, Price Administrator*, decided on March 29, 1945 and not reported, on the theory that Armour & Company's fresh beef losses were more than made up by Armour from processing and manufacturing operations, and that Armour was a representative packer.

The Court, in adopting this theory, upheld to some extent the contention of the Office of Price Administration that packers historically lost money on beef, but that their overall operations enabled them to operate generally at a profit. However, the Court, in another decision rendered on the same day, *Edward Heinz, et al.* v. *Chester Bowles, Price Administrator*, set aside MPR 169 and negated OPA's theory of historical losses on carcass beef insofar as it applied to non-processing slaughterers.

The *Armour* and *Heinz* cases create an irreconcilable conflict. Armour can in no case be considered as "a representative packer." Its operations are multitudinous in

nature, and a great portion of its by-products are foreign to the average meat packer. The efficiency of operation credited to a packer like Armour is not a fair standard for the industry as a whole. The norm is therefore manifestly unfair and should be set aside.

Petitioner has offered proof, which has not been denied, that the markup allowed to hotel and restaurant supply houses under the regulation is disproportionate to the actual cost. The effect has been to increase the price of livestock for the reason that packers having hotel and restaurant supply departments are able to pay the highest prices for livestock and still operate at a profit. This fact is well known in the industry but was discarded by the Emergency Court of Appeals.

Maximum Price Regulation 169 limited any slaughterer from going into the hotel and restaurant supply business unless he was so engaged in a base period fixed by the regulation. Petitioner has contended that such a restriction was arbitrary and capricious. The Emergency Court of Appeals made no ruling on this point, because it decided that it had no jurisdiction to pass upon this particular objection, and that it was limited to review of regulations and orders issued under paragraph 2 of the Act. We believe that the Court was incorrect in its conclusion. The Act reads, inter alia, as follows:

> "Upon the filing of such complaint the Court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding."

This particular limitation was part of the regulation and the Court had jurisdiction to pass upon its validity.

V

Conclusion

For the reasons heretofore assigned, it is respectfully submitted that this case is one which justifies the issuance of a Writ of Certiorari.

Respectfully submitted,

ELI E. REICH,
BENJAMIN M. BECKER,
Attorneys for Petitioner.

(8012)

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1221

OSWALD AND HESS COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals appears at pages 184 to 188 of the Record. It has not yet been reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered March 29, 1945 (R. 189). The petition for a writ of certiorari was filed April 28, 1945. Jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act of 1942, as

amended, c. 26, 56 Stat. 23 (herein sometimes referred to as "the Act"), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

(1) Whether petitioner established that the maximum prices for beef carcasses and wholesale cuts under Revised Maximum Price Regulation No. 169 are not valid under the standards of the Emergency Price Control Act, as amended.

(2) Whether the Regulation is unlawfully discriminatory because it establishes a higher price for fabricated beef cuts when sold by hotel supply houses than when sold by slaughterers.

(3) Whether the court below correctly held that it lacked jurisdiction to review the validity of a provision of Revised Maximum Price Regulation No. 169 which had been promulgated by the Price Administrator, not under the Emergency Price Control Act, but under authority conferred by the Second War Powers Act and delegated to him.

STATUTES AND REGULATION INVOLVED

The pertinent provisions of the Emergency Price Control Act, as amended, of the Second War Powers Act, and of Revised Maximum Price Regulation No. 169, Beef and Veal Carcasses and Wholesale Cuts (7 F. R. 10381; 8 F. R. 7109, 10362, 11081; 9 F. R. 1121, 4648) are set forth in the Appendix, *infra*.

STATEMENT

Petitioner slaughters livestock, including cattle, and sells fresh meat, including beef carcasses and wholesale cuts, and also manufactures and sells sausage (R. 2). As a seller of beef, petitioner is subject to the provisions of Revised Maximum Price Regulation No. 169, Beef and Veal Carcasses and Wholesale Cuts, which was issued December 10, 1943, fixing maximum prices for beef. On August 20, 1942, petitioner filed a protest with the Price Administrator against the predecessor regulation, Maximum Price Regulation No. 169 (7 F. R. 4653); the protest was concerned primarily with the effect of the regulation upon petitioner's sausage business (R. 2–7). After the introduction of additional evidence (R. 15–42), the protest was denied by the Administrator on May 4, 1943 (R. 43–50).

On May 24, 1943, petitioner filed its complaint in the Emergency Court of Appeals (R. 152). On November 3, 1943, that court granted petitioner's application to present additional evidence to the Price Administrator (R. 93). Petitioner's additional evidence emphasized its inability to recover costs on beef, and the allegedly excessive margin allowed to hotel supply houses (R. 96–100). After the Administrator incorporated certain material into the record (R. 107) and petitioner submitted rebuttal evidence (R. 111), the protest was denied by the Administrator upon reconsideration

(R. 115–131) and a supplemental transcript of the proceedings before him was filed with the Emergency Court of Appeals on August 15, 1944 (R. 91). The court sustained the denial of the protest and dismissed the complaint (R. 184–189).

ARGUMENT

1. Petitioner's first contention is that the Regulation fails to comply with the standards of the Act because it does not provide a profit on petitioner's sales of beef. The court below dismissed the complaint because petitioner had failed to establish either that the meat packing industry as a whole was not earning profits on over-all operations equal to those earned during representative peacetime years or that the industry generally was not able to recover out-of-pocket costs on cattle operations (R. 185). In so holding, the court applied, to the special circumstances of the meat packing industry, standards which it had previously held to satisfy the basic statutory requirement that maximum prices established by the Administrator must be "generally fair and equitable." *Gillespie-Rogers-Pyatt Co. et al.* v. *Bowles,* 144 F. (2d) 361 (E. C. A. 1944); *Armour and Company* v. *Bowles,* (E. C. A.), decided March 29, 1945, pending on petition for certiorari, No. 1220, present Term. Those standards had been fully explained by the Administrator to the Congress during the course

of hearings on the extension of the Act.[1] In extending the effective date of the Act, without making any change in the basic standard,[2] the Congress indicated its acceptance and approval of the Administrator's interpretation of that standard. *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 313; *Costanzo* v. *Tillinghast*, 287 U. S. 341, 345.

Petitioner's own situation confirmed the Administrator's conclusion as to the profitable condition of the industry generally and the unreasonableness of attempting to assure a profit on each commodity produced by a multiple-product industry. Despite alleged losses on beef, petitioner's profits before taxes in 1943 were more than

[1] See Senate Banking and Currency Committee, Report on S. 1764, Report No. 922, 78th Cong., 2d Sess., views of the minority, p. 25, supplemental statement, pp. 45–47. See also testimony by Mr. Brownlee, Deputy Administrator for Price: House Hearings on H. R. 4376, 78th Cong., 2d Sess. (1944) (hereafter referred to as House Hearings), Vol. 1, pp. 55, 62; Senate Hearings on S. 1764, 78th Cong., 2d Sess. (1944) (hereafter referred to as Senate Hearings), pp. 77–78, 91–96); written statements by the Administrator: Senate Hearings, p. 1444–5, House Hearings, pp. 2128–2130; Memorandum on Certain Questions of Construction of the Emergency Price Control Act relating to Standards for Maximum Prices, Senate Hearings, pp. 1404–1412, House Hearings, Vol. 2, pp. 1984–1993; Memorandum on Certain Questions of Construction of the Emergency Price Control Act of 1942 and the Stabilization Act of October 2, 1942, House Hearings, Vol. 2, pp. 1993, 1996–1999; Senate Hearings, pp. 1422, 1425–1428.

[2] Stabilization Extension Act of 1944, c. 325, 58 Stat. 643.

150% of its average profits in the three years immediately preceding price control (R. 127; 35, 37, 39, 106). Moreover, petitioner had stated in its original protest that:

> it has always been necessary for the protestant to sell its fresh beef at a loss, which loss was always recovered by the sale of sausage products to its customers (R. 4).

Thus, petitioner undermined its own contention that it was entitled under price control to a profit margin on sales of beef.

2. Petitioner urges that the Regulation discriminates unlawfully against slaughterers by providing an excessively high mark-up for the sale of fabricated beef cuts to purveyors of meals by non-slaughtering hotel supply houses. But petitioner admitted that fabricated cuts cost more to process than ordinary wholesale cuts (R. 97), and, as the court below observed (R. 187), failed to present evidence showing that the differentials finally established were excessive. Section 2 (c) of the Act authorizes the Administrator to make necessary "classifications and differentiations." Petitioner failed to make any substantial showing that the differential in the maximum prices for fabricated cuts was unreasonable.

3. Section 1364.415 of the Regulation established quota restrictions on the sale of fabricated cuts to purveyors of meals. Briefly, it prohibited any seller from selling in the form of fabricated

cuts in any quarterly period more than 70% of the total weight volume of meats that the same seller had sold to purveyors of meals in the three months ended December 15, 1942. Subsection (d) of Section 1364.415 expressly recited that the section was issued under the authority to ration meat which had been vested in the Administrator by delegation of powers contained in Title III of the Second War Powers Act, 56 Stat. 176. By sections 204 (a) and 203 (a) of the Emergency Price Control Act, the jurisdiction of the Emergency Court of Appeals is limited to review of regulations or orders issued under section 2 of that Act. The court below was clearly right in concluding that it had no jurisdiction to review an order issued under wholly different authority merely because, for the convenience of those subject to it, it had been set forth as part of a maximum price regulation.

CONCLUSION

The decision below is correct and does not warrant further review. The petition should therefore be denied.

Respectfully submitted,

HUGH B. COX,
Acting Solicitor General.

RICHARD H. FIELD,
General Counsel,
Office of Price Administration.

MAY 1945.

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APPENDIX

Emergency Price Control Act of 1942, as Amended, 56 Stat. 23; 58 Stat. 643

SEC. 2. (a) Whenever in the judgment of the Price Administrator (provided for in section 201) the price or prices of a commodity or commodities have risen or threaten to rise to an extent or in a manner inconsistent with the purposes of this Act, he may by regulation or order establish such maximum price or maximum prices as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum price, the Administrator shall ascertain and give due consideration to the prices prevailing between October 1 and October 15, 1941 (or if, in the case of any commodity, there are no prevailing prices between such dates, or the prevailing prices between such dates are not generally representative because of abnormal or seasonal market conditions or other cause, then to the prices prevailing during the nearest two-week period in which, in the judgment of the Administrator, the prices for such commodity are generally representative), for the commodity or commodities included under such regulation or order, and shall make adjustments for such relevant factors as he may determine and deem to be of general applicability, including the following: Speculative fluctuations, general increases or decreases in costs of production, distribution, and transportation, and general

increases or decreases in profits earned by sellers of the commodity or commodities, during and subsequent to the year ended October 1, 1941: *Provided,* That no such regulation or order shall contain any provision requiring the determination of costs otherwise than in accordance with established accounting methods. Every regulation or order issued under the foregoing provisions of this subsection shall be accompanied by a statement of the considerations involved in the issuance of such regulation or order. As used in the foregoing provisions of this subsection, the term "regulation or order" means a regulation or order of general applicability and effect. Before issuing any regulation or order under the foregoing provisions of this subsection, the Administrator shall, so far as practicable, advise and consult with representative members of the industry which will be affected by such regulation or order, and shall give consideration to their recommendations. In the case of any commodity for which a maximum price has been established, the Administrator shall, at the request of any substantial portion of the industry subject to such maximum price, regulation, or order of the Administrator, appoint an industry advisory committee, or committees, either national or regional or both, consisting of such number of representatives of the industry as may be necessary in order to constitute a committee truly representative of the industry, or of the industry in such region, as the case may be. The committee shall select a chairman from among its members, and shall meet at the call of the chairman. The Administrator shall from time to time, at the request of

the committee, advise and consult with the committee with respect to the regulation or order, and with respect to the form thereof, and classifications, differentiations, and adjustments therein. The committee may make such recommendations to the Administrator as it deems advisable, and such recommendations shall be considered by the Administrator. Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, without regard to the foregoing provisions of this subsection, issue temporary regulations or orders establishing as a maximum price or maximum prices the price or prices prevailing with respect to any commodity or commodities within five days prior to the date of issuance of such temporary regulations or orders; but any such temporary regulation or order shall be effective for not more than sixty days, and may be replaced by a regulation or order issued under the foregoing provisions of this subsection.

* * * * *

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. Under regulations to be prescribed by the Administrator, he shall provide for the making of individual adjustments in those classes of cases where the rent on the maximum rent date for any housing accommodations is, due to peculiar circumstances, substantially higher or lower than the rents generally

prevailing in the defense-rental area for comparable housing accommodations, and in those classes of cases where substantial hardship has resulted since the maximum rent date from a substantial and unavoidable increase in property taxes or operating costs. Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

SEC. 203. (a) At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the

event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

(b) In the administration of this Act the Administrator may take official notice of economic data and other facts, including facts found by him as a result of action taken under section 202.

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no

evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

(b) No such regulation, order, or price schedule shall be enjoined or set aside, in whole or in part, unless the complainant establishes to the satisfaction of the court that the regulation, order, or price schedule is not in accordance with law, or is arbitrary or capricious. The effectiveness of a judgment of the court enjoining or setting aside, in whole or in part, any such regulation, order, or price schedule shall be postponed until the expiration of thirty days from the entry thereof, except that if a petition for a writ of certiorari is filed with the Supreme Court under subsection (d) within such thirty days, the effectiveness of such judgment shall be postponed until an order of the Supreme Court denying such

petition becomes final, or until other final disposition of the case by the Supreme Court.

* * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

Second War Powers Act, c. 199, 56 Stat. 176

TITLE III—PRIORITIES POWERS

SEC. 301. Subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676), entitled "An Act to expedite national defense, and for other purposes", as amended by the Act of May 31, 1941 (Public Law Numbered 89, Seventy-seventh Congress), is hereby amended to read as follows:

SEC. 2. (a) * * *

(2) Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

* * * * *

(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.

Revised Maximum Price Regulation No. 169, Beef and Veal Carcasses and Wholesale Cuts (7 Fed. Reg. 10381; 8 F. R. 7109, 10362, 11081; 9 F. R. 1121, 4648)

§ 1364.415 *Limitations on volume of sales to purveyors of meals.* (a) Notwithstanding the terms of any contract, agreement, or other obliga-

tion, no hotel supply house, packing or slaughtering plant, packer's branch house, wholesaler's or other seller's establishment shall sell and/or deliver to purveyors of meals other than contract schools, during any three month quota period beginning June 1, September 1, December 1, or March 1, a total volume by weight of fabricated meat cuts and/or ground beef and miscellaneous beef items, and/or boneless and miscellaneous veal cuts in excess of 90 percent of the total volume by weight of beef, veal, lamb and mutton, not including canned meats of any kind, variety meats and edible by-products of any kind, and/or sausage and similar products thereof, sold or delivered by such selling establishment from September 15, 1942, through December 15, 1942, to purveyors of meals other than to war procurement agencies, except that any selling establishment which was not engaged in sales of beef, veal, lamb and mutton to purveyors of meals from September 15, 1942, through December 15, 1942 for the reason that the selling unit and all facilities thereof were under the control of an agency of the United States Government, may determine its quota by reference to the three month quota period of 1942 immediately prior to such assumption of control: *Provided, however,* That any selling establishment may file an application in duplicate with the appropriate Regional Office of the Office of Price Administration or such other offices as may be authorized by the appropriate Regional Office, and request authorization to sell and/or deliver fabricated meat cuts and/or ground beef and miscellaneous beef items and/or boneless and miscellaneous veal cuts to purveyors of meals. Such selling establishment shall

allege and prove that the granting of such authorization will alleviate a critical shortage in supplies of such meat items available in the market area for purveyors of meals, which shortage has occurred because of: (1) the issuance of a judicial or administrative suspension order against any person in the market area prohibiting the sale and/or delivery by that person of any meat item subject to a quota restriction under the provisions of this regulation, or (2) the voluntary or involuntary cessation or suspension of business by a person, lawfully authorized to make sales pursuant to paragraph (a) of this § 1364.415.

Upon proof of the foregoing, the Regional Administrator for the area, or such office as may be designated by the Regional Administrator, may, by order, authorize a quota for such period and subject to such terms and conditions as are deemed necessary, not in excess, however, of such portion of ascertainable quota or quotas which remain unused in the market area and which cause the critical shortage. Following the issuance to any selling establishment of such authorization the Regional Administrator for the area shall forward a copy of the application together with a copy of the authorization and such other data as were used in the determination to the Administrator at Washington, D. C., for review. After review, the Regional Administrator or such office as may be authorized by the Regional Administrator shall change, modify or revoke the order in such manner as the Administrator deems appropriate. However, the provisions of the Regional Administrator's order, or the order of

such office as may be authorized by the Regional Administrator, shall remain in full force and effect until such time as it is changed, modified or revoked.

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(d) This section is issued under the authority vested in the Administrator by Executive Order No. 9125, issued by the President on April 3, 1942; Directive No. 1 and Supplementary Directive No. 1–M of the War Production Board, issued on January 24, 1942, and September 12, 1942, respectively; Executive Order No. 9280, issued by the President on December 5, 1942; and Food Directives No. 1, No. 3, No. 5, No. 6 and No. 7, issued by the Secretary of Agriculture.

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